HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 434/2002 (M/S)
Rakesh Chand Bhandari
vs
Ram Singh Salal

Approved for reporting

_____

~~Not Approved for Reporting~~

Date of decision 23rd Sep, 2004.

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 434 (M/S) of 2002

Ramesh Chandra Bhandari ……. Petitioner

Versus

Ram Singh Salal ……. Respondents

……

Hon. Rajesh Tandon J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 04.05.2002 passed by the District Judge, Almora.

Factual Aspects Of The Case:

Briefly stated according to the case of the petitioner, dispute relates to Mohalla Thapaliya, Almora of which the petitioner is the owner. He has stated that he was in the Indian Army and due to the condition of service he mostly lived out of Almora. Since the year 1983, he retired from the Indian Army.

Accordingly to the petitioner he wants to settle his son in the business, who is physically handicapped. Petitioner has filed the application under section 21(1)(a) of the act No. XIII of 1972 praying for the release of the shop.

Written statement was filed by the respondent who has contested the release application. It was stated that the petitioner is running the hotel business in the name of Prabhat Hotel and, therefore, his need is not genuine.

The Prescribed Authority has allowed the application and released the premises.

The respondent has preferred the appeal which was allowed by the Appellate Authority.

Discussion about the bona fide need of the Landlord

The Appellate Authority has considered the *bona fide* need as well as comparative hardship. While considering the same, it has come in the evidence that the landlord in paragraph 4 has stated that he has retired from Army in the year 1983. In paragraph 5, it has been stated that the son of the petitioner is disabled and it is not possible to run any other business for the disabled son.

In reply to the same, it has been submitted by the tenant that in a very small portion he is a tenant of the premises and rest of the portion has been occupied as a hotel in the name of "Prabhat Hotel" and if the landlord requires he can easily be accommodated in the Hotel. There is no need to require a separate business.

Paragraph 11 of the written statement is quoted below:

> "कि प्रश्नगत भवन के एक छोटे भाग में ही विपक्षी किरायेदार है, शेष भवन में होटल है। शेष भवन भी व्यवसायिक है, जो प्रभात होटल के नाम से जाना जाता है। यदि प्रार्थी को विकलांग पुत्र को कारोबार में लगाना होता ता वह इस होटल में कही भी लगा सकता था, परन्तु ऐसा नही है । इसके अतिरिक्त प्रार्थी का उपरोक्त विंकलांग पुत्र उक्त होटल के देखरेख स्वंय करता है क्योकि प्रार्थी का नगर हल्द्वानी में कारोबार है, वह हल्द्वानी अपना कारोबार देखता है।"

Further in paragraph 12 of the written statement it has been stated that the landlord has got two farms at Haldwani and both father and son are engaged in the said farm.

In para 14 of the written statement, the rewpondent has stated that he has made efforts, but could not get any other shop. Relevant paragraph is being quoted below:

> "कि विपक्षी सन 69 से उपरोक्त परिसर में किरायेदार है और अपना व्यवसाय कर रहा है । इस परिसर में उसकी गुडविल बनी हुई है । प्रार्थी का यह कथन कि अल्मोडा नगर में दुकान उपलब्ध है, बिल्कुल गलत है । विपक्षी द्वारा अन्यत्र दुकान

प्राप्त करने हेतू कई प्रयाय किये गये है, उसके द्वारा अधिकृत अधिकारी शहरी भवन अधिनियम के यहॉ प्रार्थनापत्र भी दिया है परन्तु उसे कही दुकान प्राप्त नहीं हुई है। यघपि प्रार्थी की कोई वास्तविक आवश्यकता प्रश्नगत दुकान की नही है। परन्तु फिर भी उक्त दुकान खाली करवाई गई तो उसका परिवार भूखो पर जायेगा। उसका व्यवसाय केवल प्रश्नगत दुकान की है।"

The Appellate Authority in the light of the aforesaid fact has considered the *bona fide* need. The Appellate Authority has also considered the certificate paper no. 20-C issued by the Chief Medical Officer, Almora in which it has been written that Vinod Kumar Bhandari is suffering from "cerebral palsy". The Appellate Authority has also given the dictionary meaning and observed to the following effect:

> " This 'disease', according to Oxford Dictionary, is spastic paralysis from brain and damage with jerky or uncontrolled movements. This clearly shows that the son of the applicant is suffering from brain disease to which the applicant has admitted in para 5 that his son cannot do any work at all due to weakness of body and disease."

There is affidavit of Vinod Kumar Bhandari and in para 4 of the affidavit dated 19.03.1998, it has been admitted that he is suffering from bodily handicapped and feels difficulty in stepping the staircase for going up and down and he is totally disabled in movement to do any work. The District Judge, has also remarked and observed that he is also illiterate because of the signatures of this affidavit.

The learned Appellate Court in the light of the aforesaid fact has considered definition of the "desire" and has come to the conclusion that it is a case of mere desire and not a case of genuine requirement and unless the requirement is not established, it is not possible to get the release of the shop as contemplated under section 21(1) (a) of the Act No. 13 of 1972.

Section 21 (1)(a) of the Act provides as under:

> **"Proceedings for release of building under occupation of tenant.** (1) The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely –

(a) that the building is *bona fide* required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of the public charitable trust, for object of the trust;"

The findings of the Appellate Court regarding bona fide need are quoted below:

> "The Hon'ble Supreme Court has clearly laid down that if the landlord requires the building in dispute, then mere 'desire' is not enough. He has to show some element of need when his son has a brain damage disease which gives uncontrolled movements, then how he can do the business in the shop in dispute. The learned Prescribed Authority has not considered this aspect of the case and the desire of the son of the applicant. Although in the petition or in affidavits, it has not been disclosed as to what type of business will be established to the son Vinod Kumar Bhandari; but lateron it has come in the affidavit of the applicant that his son will do the business of stationery and books. I would like to say here that the books and stationery are not manufactured in Almora city. They have to be purchased from whole-sale shops or from factories. Then these good shall be purchases either from whole-sale shops of Haldwani, Bareilly or elsewhere. Definitely, the son has to go out of station to purchase the goods for selling in retail at Almora. If he is suffering from the disease mentioned above, he cannot move as he himself has stated in the affidavit. Hence, the need of the applicant is not genuine or bonafide."

In AIR 1974 Supreme Court 1596- Muttual Vs. Radhe Lal the Apex Court has defined the word 'requirement' and has held that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business, is not decisive. The observation of the Apex Court in para 12 is an under:

> "The question would still remain whether there were proper grounds on which this finding of fact could be interfered with by the High Court. It is not well settled by several decisions of this Court including the decision in Sarvate T.B.'case, 1966, MPLJ 26 (SC) and Smt. Kamla Soni's case, C.A.No. 2150 of 1966, D/- 26.9.1969 = (reported in AIR 1969 NSC 186) that mere assertion

on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the Court to determine the truth of the assertion and also whether it is *bona fide*. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is *bona fide*. The word 'required' signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show- the burden being upon him - that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business. The Additional District Judge did not misdirect himself in regard to these matter, as for example, by misconstruing the word 'required' or by erroneously placing the burden of proof on the appellant and no error of law was committed by him in arriving at the finding of fact in regard to the question of bond fide requirement of the respondent, which would entitle the High Court in second appeal to interfere with that finding of fact."

Apex Court in the case of Muttulal (supra) has also recorded a finding that the finding of the District Judge that the respondent did not *bona fide* required the shop for starting the business and the finding of fact cannot be said to be arbitrary or unreasonable. The observations of the Apex Court are quoted below:

"These circumstances, borne out by the evidence on record and held established by the Additional district Judge, clearly supported the finding of fact reached by the Additional District Judge that the respondent did not *bona fide* require the Lohia Bazar shop for starting business as a dealer in iron and steel materials. Nor could this finding of fact be said to be arbitrary, unreasonable or perverse so as to merit interference by the High court in second appeal. There can, therefore, be no doubt that the High Court exceed its jurisdiction in second appeal in reversing the decision of the Additional District Judge and passing a decreed for eviction against the appellant."

In P.B. Desai Vs. C.M.Patel- AIR 1974 SC 1059, the Apex Court has held that the High Court could interfere with the decision of the lower Court, if there is miscarriage of justice. The High Court cannot re-assess

the value of evidence and interfere with the finding of fact. The observations are quoted below:

> "The High Court can, therefore, interfere with the decision of the lower Court under section 29 sub-section (3) only if there is miscarriage of justice due to a mistake of law. The High Court cannot reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower Court is wrong and the lower Court should have reached a different conclusion of fact from what it did: in other words, the High Court cannot reappreciate the evidence and substitute its own conclusions of fact in place of those reached by the lower Court. Bearing in mind this limited scope and ambit of the revisional power of the High Courts under Section 29, sub sec (3), we may not proceed to consider whether the High Court acted within its jurisdiction in setting aside the decision of the District Judge."

Comparative Hardship

So far as the comparative hardship is concerned, it has come in the evidence on record that the landlord is having a hotel and there is nothing on the record to show that the hotel is not continuing or it is not in control of the landlord. There is nothing on the record to show that the hotel is not continuing or it is not in control of the landlord. There is no reason at present to oust the sitting tenant when the landlord himself can accommodate his disabled son in the business of the hotel itself.

Proviso to section 21 (1)(a) provides as under:

> "Provided also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant from the grant of the application as against thelikely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed."

Rule 16 (2) (c) provides that the greater the existing business of the landlords own, there will be less justification for allowing the application. Rule 16 (2) (c) reads as under:

> "(c) the greater the existing business of the landlord own part from the business proposed to the set up in the leased premises, the less is the justification for allowing the application, and even if an application is allowed in such a

> case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority."

The Appellate Court on comparative hardship has recorded finding as below:

> "It is well settled view of law that when the comparative hardship of tenant and landlord are identical and if the need of the landlord is held to be genuine and bona fide, then the building shall be released in favour of the landlord. Here the need of the landlord has not been established genuine and bona fide. Hence only on the basis of comparative hardship, the application for release cannot be allowed."

The finding of the Appellant Court that it is a small shop and, therefore, the proviso to section 21, which provides for comparison of the hardship lies in favour of the tenant rather than the landlord. The Appellate Court in such circumstances has rightly pointed out that unless the landlord establishes some additional factor as held in Allahabad Rent Cases 1982 page 440 - Bishan Chand Vs. V Addl. District Judge, Bulandshahr and another, the same cannot be allowed. The observations in the case of Bishan Chand (supra) is based on Rule 16 (2) of U.P.Act No. XIII of 1972. The observations of the apex Court are quoted below:

> "He held that hardship to both the landlord and the tenant would be the same. If that be the finding, in the absence of any additional circumstances indicating that preference could be shown to the landlord, the ejectment order in his favour could not be made."

The Apex Court in the case of Ashok Kumar Vs. Sita Ram reported in 2001 (2) Allahabad Rent Cases 1 observed as under:

> "13. As noted earlier the High Court has faulted the Appellate Authority for not considering the question of comparative hardship. The Appellate Authority did not feel the necessity to go into that question since it had recorded the finding

that grant of eviction as pleaded by the landlord was not acceptable. On a fair reading of the proviso to Section 21 (1)(a), it is clear that the legislative mandate is that the Prescribed Authority shall take into account the likely hardship to the tenant from the grant of application as against the likely hardship to the landlord from the refusal of the application. This question can appropriately be considered by the Authority when he comes to the conclusion that the plea of *bona fide* requirement taken by the landlord is found to be acceptable. It is at that stage that the Authority should take into account the hardship likely to because to the tenant in allowing the petition for eviction as against the hardship likely to be caused to the landlord in the event of rejection of the prayer for eviction of the tenant. In case the Authority comes to the conclusion that the case of bona fide requirement pleaded by the landlord is not believable and acceptable the question of allowing the petition for eviction does not arise and so the necessity of making a comparison between the hardship in allowing the petition for eviction and disallowing the same does not arise.

14. This Court in Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas, (1993) 2 SCC 458: 1993 SCFBRC 250 held:

> 'The High Court was also in error in assuming that the landlord is supposed to have pleaded his own comparative hardship in the plaint itself. Section 13 (2) comes into play at the stage when the Court is satisfied that the ground contained in clause (g) of sub-section (1) of section 13 of the Act has been made out. It is at that stage that the Court has to examine the question of comparative hardship. It was thus not necessary to plead in the plaint itself. Often the parties at the stage of recording of evidence of bona fide personal requirement also lead evidence as to the comparative hardship of the landlord or the tenant. But such averments are not required to be pleaded in the plaint itself to give cause of action to the landlord to enable him to file a suit for eviction of the tenant on the ground of his bona fide personal requirement.

15. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter with no reasonable person was likely to take. In that view of the matter there was no justification for the high Court to interfere with the order in exercise of its writ jurisdiction. In the matter like the present case where the order passed by the Statutory Authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High court is not expected to interfere with the final order passed by the statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court

should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has field to keep the salutary principles in mind while deciding the case."

In writ petition no. 787 of 2002 (M/S)- M/s Ram Lal Brother and another Vs. District Judge Nainital AND 1023 of 2002(M/S) Sri Neeraj Shah Vs. M/s Ram Lal Brothers and others decided on 10.09.2004 considering the question of comparative hardship, it has been observed as under:

" From above it is evident that like the Prescribed Authority stress has been laid on the issue of ownership of Armdale hotel without considering the vital evidence and important aspect of the matter that the landlord not only reside in the Armdale hotel but is also fully engaged in running the same. As stated in the earlier part of the judgment the running of the hotel in Nainital is full time job and this is the reason that Sri Neeraj Shah has to reside with family there in the premises of the hotel itself. It is not a case in which a son merely sits in the shop of his father or merely assist in the business as referred to by the learned Appellate Authority but the material on record indicate that Sri Neeraj Shah is fully engaged in running the Armdale hotel and it is not a mere case of assistance to his mother in the said business. This was a reason that his name alongwith his mother's name came to be placed *bona fidely* in the directory of hotels and restaurants of Nainital (paper no. 156-C) in column of name of proprietor/partner/director of the hotel Armdale."……

Coming to the comparative hardship as contemplated by the provisions of Rule 16(2) of Rules framed under the Act No. 13 of 1972, it need to be stated that the question in view of the above conclusion loses its significance……..

At any rate the finding of fact as to the comparative hardship as recorded by the authorities below also suffers from vice of patent error which cannot be legally maintained.

For the reasons aforesaid and in view of the findings of fact as recorded by the authorities below being based on non-consideration of vital aspects of the matter and being perverse grave injustice has occasioned for the tenant and the findings are, therefore, liable to be set aside. Since the need of the landlord has not been found to be *bona fide*, and genuine the release application filed under section 21(1)(a) of the Act No.13 of 1972 is liable to be dismissed."

Counsel for the petitioner has relied upon the judgment of Rameshwar Sahi Mathur Vs. District Judge, Dehradun, reported in 2004 (1) ARC 177. The present case is distinguishable from the judgment of

Rameshwar Sahi Mathur. In Rameshwar Sahi Mathur (supra) both the Courts below have recorded the findings with regard to the bonafide need in favour of the landlord and only on the ground of comparative hardships, the Appellate Court has recorded the finding against the landlord. Comparative hardship being relative factor, it has been held as under in in para 12 and 13 of the judgment.

> "12. The appellate authority after the remand of the case has recorded the finding of bona fide need in favour of the landlord but has rejected the release on the ground of greater hardship in favour of the tenant…….. I have, therefore, no hesitation in holding that the landlord requires the portion in the tenancy of Sri Murarilal Gupta genuinely and in good faith. He is, therefore, entitled to claim its release under section 21 of the Act.
>
> 13. …….. I have, therefore, no hesitation in holding that if the tenant is evicted from his present tenanment he shall be thrown on the road and shall suffer greater and irreparable hardship. He can, however, make his own alternative arrangement for kitchen, relese of which is absolutely necessary and has to be upheld."

Interference under Article 226/227 of Constitution of India:

The jurisdiction under article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the fact recorded by the Appellate Authority.

In M.S.Zehad Vs. K. Raghavan- JT 1998 (8) SC 262, it has been observed bu the Apex Court as under:

> "In the present case, as noted earlier, the plaintiff is already occupying his own house. He has possession of the whole of the first floor and substantial portion of the ground floor. He is not staying in any rented premises or at sufferance of any one. Now the question is, whether the accommodation available with him is so insufficient, looking to the size of the family, that he badly requires additional accommodation in the same building. This question has to be answered in the light of the available accommodation with the landlord and the need of his family members. For deciding this question, the observations in the aforesaid cases cannot be any assistance to the learned senior

counsel for the plaintiff. For all these reasons, therefore, point no. 2 will have to be answered in the negative against the plaintiff and in favour of the defendant."

In Mrs.Rena Drego Vs. Lalchand Soni,etc. reported in SCFBRC 1998 page 147 it has been held as below:

"It is not well nigh settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusions of facts, however, erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court in Wayam Singh and another Vs. Amarnath and another, AIR 1954 SC 215, has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate, courts within the bounds of their authority and not for correcting mere error.

The said decision was made in an appeal which considered an order passed by Rent Control Court, quoting the aforesaid dictum a three judge "Bench of this Court has in Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte and another, AIR 1975 SC 1297, observed thus:

> "The power of superintendence of High Court under Article 227 being extraordinary is to be exercised most sparingly and only in appropriate cases. The power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot, in guise of exercising its jurisdiction under Article 227, convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Courts or tribal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or tribunal. It's function is limited to seeing that the subordinate Court or Tribunal functions within the limits of its authority. It cannot court mere errors of fact by examining the evidence and appreciating it.

The aforesaid position has been reiterated by the Court on subseqauent occasions also (vide M/sIndia Pipe Fitting Co. Vs. Fakruddin M.A.Baker and Anr. AIR 1978 SC 45 and Sukhbir Narain Vs. Deputy Director of Consolidation, AIR 1987 SC 1645)."

In Civil Appeal No. 266 of 1999 Ram Shankar Dixit and another Vs. Vijay Bahadur Singh and another decided on 15.1.1999, the Apex Court held as under:

“ It is well settled that a finding of an inferior Tribunal can be interfered by the High Court in exercise of its jurisdiction only when the High Court comes to the conclusion that the Tribunal has entertained any inadmissible evidence or that it has ignored to consider any vital piece of evidence or that the finding is based on no evidence at all.

In Deena Nath Vs. Pooran Lal reported in (2001) 5 Supreme Court Cases 705, the Apex Court has held as under:

“15…….The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid mere whim or desire. The ‘bona fide requirement’ must be in presenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or twon concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonable suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/ authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording f finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the Court has not applied the statutory provisons to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease tobe a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case, the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under section 100 C.P.C.

16. In this connection, we may refer to the decision of this Court in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta in which it was held inter alia that (SCC Headnote):

“ The term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of

intensity contemplated by ‘requires’ is much higher than in mere desire. The phrase ‘required bona fide’ is suggestive of legislative intent that a mere desire which is the outcome of a whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises from himself or for any member of the family would entitle him to seek ejectment of the tenant.”

Therein it was further held: (SCC p.231, para 1).

“ The High Court (in revision) is obliged to test the order of the Rent Controller on the touchstone of ‘whether it is according to law’. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonale or is one that no reasonable person acting with objectivity could have reached on the material available”.

The scope of Article 227 has also been considered in the case of Estralla Rubber (M/s) Vs. Dass Estate reported in 2002 SCFBRC 88, wherein the Apex Court has held in paragraphs 6 and 7 as under:

“ The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior Courts and Tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the Courts subordinate or Tribunals. Exercise of this power and interference with the orders of the Courts or Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an Appellte Court or substitute its own judgment in place of that of subordinate Court to correct an error, which is not apprarent on the fact of record. The High Court can set aside or ignore the findings of facts of inferior Court or Tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to.

7. This Court in Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ramtahel Ramanand and others AIR 1972 SC 1598 in para 12

has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh and another Vs. Amarnath and another, 1954 SCR 565. This Court in Babutmal Raichand Oswal Vs. Laxmibai R. Tarte and another, 1972 RCR (Rent) 565 (Bombay): AIR 1975 SC 1297 has observed that the power of superintendence under Article 227 cannot convert itself into a Court of appeal when thelegislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 S.C.C. 682 as below:

"In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that-" considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

Counsel for the petitioner has filed a supplementary affidavit pointing out certain properties, which have come in possession of the tenant subsequently. The same has been denied by the tenant in his supplementary counter affidavit by stating that the same neither belong to him not the property indicated by the petitioner is non-residential. Suffice

it to state that under Article 226 of the Constitution of India, no new facts can be taken. Further, unless the bona fide need is established, all such facts are wholly irrelevant.

However, in view of the decision of the Apex Court in the case of Gaya Prasad Vs. Pradeep Srivastave, 2001 (2) SCC 604, which has been relied upon in the case of G.C. Kapoor Vs. Nand Kumar Bhasin 2001 (2) Alld. Rent Cases 603, it has been held that the application has to be decided on the basis of the date of filing of the application. . The observations of the apex Court are as under:

> "This Court in Gaya Prasad V. Pradeep Srivastava, 2001 (2) SCC 604:2001 SCFBRC 128, relying on early decisions of this Court held that the crucial date for deciding as to bona fide or requirement of the premises in question for starting a clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined provincial medical service and was posted at different places. The Court refused to take notice of the subsequent event holding that crucial date was the date of filing of the eviction petition."

However, liberty is given to the petitioner to make a fresh application under section 21(1)(a) of the Act on subsequent facts. If the application is made, the same shall be dealt with on merit after giving opportunity to the parties.

In view of the aforesaid, writ petition lacks merit and is hereby dismissed. There will be no order as to costs.

(Rajesh Tandon, J.)

Sept. 23,2004
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